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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

BRITTNEY COURTLAND GIPSON,

Defendant and Appellant.

F069107

(Super. Ct. No. VCF274234A)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Tulare County. Gerald F. Sevier,[†] H.N. Papadakis,[‡] and Gary L. Paden, Judges.

Allan E. Junker, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the Attorney General, Sacramento, California, for Plaintiff and Respondent.

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* Before Poochigian, Acting P.J., Peña, J. and Smith, J.

[†] Retired Judge of the Tulare Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

[‡] Retired Judge of the Fresno Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

INTRODUCTION

On January 31, 2014, appellant Brittney Courtland Gipson pled no contest to two counts of attempted carjacking, one count of giving false information to a police officer, and one count of battery by gassing of a peace officer. He also admitted a prior serious felony conviction and one prison prior. On March 12, 2014, Gipson filed a notice of appeal and obtained a certificate of probable cause. Appellate counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*) on September 8, 2014, and Gipson filed a supplemental brief on September 26, 2014. We affirm the judgment.

FACTUAL AND PROCEDURAL SUMMARY

Around 3:00 p.m. on October 8, 2012, Katherine Maxwell was walking away from the parking garage where she had just parked her car when she was approached by Gipson and his female companion. Gipson was wearing a black hoodie sweatshirt and a *Scream*-type¹ Halloween mask. Gipson said, “Give me your car.” Maxwell replied, “No,” and Gipson pulled a gun from his waistband. Maxwell screamed and ran across the street toward Kaweah Delta Medical Center.

Around 3:40 p.m. the same day, Gipson and his female companion approached Andrew Kyker in the same location after he had parked his car. Gipson told Kyker to hand over his car keys and pulled a gun and pointed it at Kyker’s chest. Gipson was in the same Halloween costume as when he had approached Maxwell. Kyker recognized the female to be Veronica Baker. Kyker thought it was a joke and walked away after telling the two he was at the hospital for the birth of his child and could not give up his car.

Sergeant James Carr responded to reports of an attempted carjacking. He met up with another officer who had detained two suspects. An in-field showup was conducted. Baker was identified, and her purse was searched. Her purse contained two *Scream*

¹ *Scream* (Dimension Films 1996).

masks, an Airsoft gun, and a plastic hand gun. The other suspect was identified as Gipson.

Gipson was charged in counts 1 and 2 with attempted carjacking (Pen. Code, §§ 664, 215, subd. (a)) and in count 3 with giving false information to a police officer (§ 148.9, subd. (a)). It also was alleged that Gipson had two prior felony convictions (§ 422; Welf. & Inst. Code, § 1768.85), one a serious felony, and had served two prior prison terms (§ 667.5, subd. (b)). The case was designated as a second strike case.

On January 7, 2013, and again on June 24, 2013, the trial court conducted hearings pursuant to *People v. Marsden* (1970) 2 Cal.3d 118. At each hearing, the trial court provided Gipson with a thorough opportunity to articulate any grievances he had with defense counsel. After hearing Gipson's concerns, the trial court denied the *Marsden* motions.

On June 4, 2013, Gipson filed a motion pursuant to *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 to strike the prior conviction for violating section 422. In part, the motion asserted that the prior conviction should be stricken because there was an insufficient factual basis for Gipson's plea in that case, contending the threat was merely "juvenile braggadocio" and not a serious threat. The motion also asserted that the prior conviction should be stricken in the interests of justice.

The People filed opposition to the *Romero* motion, asserting Gipson was barred from collaterally attacking the prior conviction and that the interests of justice would not be served by striking the prior conviction. Gipson filed a reply to the People's opposition, which addressed the issue of whether he could challenge the validity of his prior conviction.

On June 26, 2013, Gipson filed a motion to have DNA evidence and other physical evidence examined by an independent laboratory, with the results to be provided only to defense counsel. The trial court granted the motion.

On January 31, 2014, a hearing was held at which Gipson entered into a plea agreement. The People orally moved to add a count 4, battery by gassing of peace officer. (§ 243.9.) The People also were charging Gipson with several misdemeanor counts of violating section 148 and one charge of vandalism. The trial court, however, indicated it was dismissing those charges, over the objection of the People. In addition, the trial court indicated that in response to the *Romero* motion, it would strike the “strike” but not “the nickel prior.”

The trial court advised Gipson that if he entered into the contemplated plea agreement, any future charges would result in Gipson being treated as a third striker and would subject him to a possible term of 25 years to life. The trial court informed Gipson of his rights, accepted a waiver of those rights, and defense counsel stipulated to a factual basis for the plea based on the police reports and preliminary hearing transcript. Gipson then pled no contest to all four counts, no contest to the section 422 prior serious felony conviction allegation, and no contest to one prior prison term allegation. The trial court found Gipson made a knowing and voluntary waiver of his rights, had freely and voluntarily entered into the plea, and understood the consequences of his plea. The trial court accepted the plea, found a factual basis existed for the plea, and dismissed the remaining allegations.

On February 27, 2014, the trial court sentenced Gipson. Formal probation was denied and a prison term imposed. Gipson was sentenced on the count 1 offense to the midterm of 30 months, a five-year consecutive term for the prior serious felony conviction pursuant to section 667, subdivision (a)(1),² a one-year consecutive term for the prior prison term enhancement pursuant to section 667.5, subdivision (b), a consecutive one-third the midterm (10 months) for the count 2 offense, no term was

² The minute order references an incorrect code section for the prior serious felony conviction. The abstract of judgment, however, identifies the correct code section.

imposed for the count 3 offense, and a consecutive one-third the midterm (one year) for the count 4 offense. Gipson was given credit for 508 days of actual time served, plus 76 days of conduct credits, for a total of 584 days' credits. In addition, the trial court imposed various fees and restitution fines. The abstract of judgment was filed on February 28, 2014.

On March 12, 2014, Gipson filed a notice of appeal in which he asserted he was challenging the validity of his plea, as well as other grounds for appeal. Gipson sought and obtained a certificate of probable cause in which he raised the issue of ineffective assistance of counsel.

On June 2, 2014, appellate counsel notified the Tulare County Superior Court of an error in the calculation of credits. Gipson asserted he was entitled to 508 days of actual credits, plus 508 days of conduct credits pursuant to section 4019, subdivision (f), for total credits of 1,016 days.

On June 9, 2014, appellate counsel filed a motion to construe the notice of appeal to include matters occurring after the plea. By order dated July 9, 2014, this court granted the motion.

On June 18, 2014, the Tulare County Superior Court filed an amended abstract of judgment showing an award of custody credits of 508 days and actual custody credits of 508 days, for a total award of 1,016 days' credits. The amended abstract of judgment was received by this court on June 25, 2014.

On September 8, 2014, appellate counsel filed a brief pursuant to *Wende, supra*, 25 Cal.3d 436. Also on September 8, this court invited Gipson to submit a supplemental brief. On September 26, 2014, Gipson filed a supplemental brief.

DISCUSSION

In Gipson's 16-page supplemental brief, he asserts that "[t]he attorney who facilitated his plea" to the section 422 prior offense "was incompetent." Gipson makes other claims in his supplemental brief: failure of defense counsel in the instant case to

object to sentencing error; the trial court erred in its exercise of discretion pursuant to section 1385; and he was not “given a trial by jury” on the prior conviction allegation. Gipson asks this court to vacate his plea to the section 422 offense.

The substance of Gipson’s contention is that he received ineffective assistance of counsel in the case in which he pled to the section 422 offense and wants to collaterally attack that conviction. Gipson does not have the right to collaterally attack the validity of the prior conviction on the basis of ineffective assistance of counsel in a noncapital case. (*People v. Homick* (2012) 55 Cal.4th 816, 892, citing *Garcia v. Superior Court* (1997) 14 Cal.4th 953, 956.)

In the instant case, the record reflects that Gipson was represented by counsel; he made a knowing, intelligent, and voluntary waiver of his rights, including the right to a trial by jury; he freely and voluntarily entered a no contest plea to the charges and the prior serious felony conviction and prior prison term allegations; and he benefited from the *Romero* motion in that the trial court declined to sentence Gipson as a second strike defendant.

After an independent review of the record, we find that no reasonably arguable legal or factual issues exist.

In reviewing the amended abstract of judgment, however, we note that it fails to reflect Gipson’s plea to the count 3 offense. We will direct the abstract of judgment be corrected to include the plea to the count 3 offense.

DISPOSITION

The amended abstract of judgment shall be corrected to reflect the no contest plea to the count 3 offense, and a copy of the corrected abstract shall be forwarded to the appropriate agencies. In all other respects the judgment is affirmed.